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CHAPTER Env-AC 200 PROCEDURAL RULES

Statutory Authority: RSA 21-0:14,IV

PART Env-AC 201 PURPOSE, SCOPE, DEFINITIONS, AND FAILURE TO COMPLY

Env-AC 201.01 Purpose and Scope. The rules of this chapter shall govern the general procedures by which the air resources council conducts adjudicatory proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its statutory jurisdiction. These rules shall be construed to secure the just, efficient and accurate resolution of council proceedings in accordance with recognized principles of due process and the requirements of RSA 541-A.

[Source. #6586, eff 9-23-97](#)

Env-AC 201.02 Definitions.

- (a) "Council" means the air resources council established by RSA 21-0:11.
- (b) "Council clerk" means the person designated by the commissioner of the department pursuant to RSA 21-0:3,VIII as clerical support staff to the council.
- (c) "Department" means the department of environmental services.
- (d) "Director" means the director of the air resources division of the department of environmental services.
- (e) "Division" means the air resources division of the department of environmental services.
- (f) "Party" means a person entitled to participate in an appeal before the council, including a person granted intervenor status.
- (g) "Person" means any individual, partnership, joint venture, association, corporation, trust, agency, private or municipal corporation, any political subdivision of the state and the United States, any governmental entity, including the division.

[Source. #6586, eff 9-23-97](#)

Env-AC 201.03 Failure to Comply with Rules. Failure to comply with a rule of this chapter shall be a basis for the council to:

- (a) Where the failure involves a document which was submitted with the intent to file with the council, refuse to accept a noncompliant document for filing;
- (b) Where the failure involves a petition or motion, deny a noncompliant petition or motion; or
- (c) Where the failure involves anything else, issue an order adverse to a noncompliant person.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 202 MEETING PROCEDURES

Env-AC 202.01 Applicability. The procedures set forth in this part shall apply to all regular and special meetings conducted by the council and to all matters scheduled to be presented to or heard by the council at any regular or special meeting.

[Source. #6586, eff 9-23-97](#)

Env-AC 202.02 Place of Meetings.

- (a) All regular meetings of the council shall be held in Concord.

(b) Special meetings, including meetings held to inform the public or solicit public comments, shall be held in Concord or such other places as the council shall determine based on consideration of maximizing access of interested parties to the meeting.

[Source. #6586, eff 9-23-97](#)

Env-AC 202.03 Quorum. The council shall have a quorum, a majority of sitting council members that when duly assembled is legally competent or without personal or professional conflict, to convene a meeting to discuss or act upon a matter within the council's jurisdiction.

[Source. #6586, eff 9-23-97](#)

Env-AC 202.04 Scheduling Meetings.

(a) Regular meetings of the council shall be held at least quarterly.

(b) Special meetings shall be those which are other than quarterly meetings and shall be held at the call of the chairman or of 3 council members.

[Source. #6586, eff 9-23-97](#)

Env-AC 202.05 Notice of Meetings. Notice shall be publicized as required by RSA 91-A "Access to Public Records". The notice shall contain the time, date and place of meeting and the scheduled agenda for the meeting. The council clerk shall maintain a record demonstrating that all statutory notice requirements have been met.

[Source. #6586, eff 9-23-97](#)

Env-AC 202.06 Record of Meetings. A record of all regular and special meetings of the council shall be kept by tape recording. Minutes of the meeting shall be prepared by the council clerk and distributed to the council members. The council clerk shall also maintain a record of all appeals pending before the council.

[Source. #6586, eff 9-23-97](#)

Env-AC 202.07 Computation of Time. Any time period referenced in these rules shall be calendar days. Computation of any period of time referred to in these rules shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is Saturday, Sunday or state legal holiday, in which event the period shall run until the next day which is not a Saturday, Sunday or state legal holiday.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 203 APPEARANCES BEFORE THE COUNCIL

Env-AC 203.01 Representatives.

(a) A person appearing before the council may be represented by:

(1) An attorney holding a current and active New Hampshire license who has filed a written appearance with the council containing his or her business address and telephone number; or

(2) Any individual who has filed a motion for leave to appear as a representative pursuant to (b), below, and which has been granted by the council.

(b) A motion for leave to appear as a representative before the council shall be granted if the motion:

- (1) Briefly describes the proposed representative's professional qualifications in representing the party;
 - (2) Provides the proposed representative's daytime address and telephone number; and
 - (3) Is signed by both the proposed representative and the party who would be represented.
- (c) Nothing in this section shall be construed to permit the unauthorized practice of law.
- (d) The council shall, after notice and opportunity for hearing, restrict an individual from acting as a representative upon a finding that the individual has engaged in willful misconduct relating to representation before the council which would be sanctioned by a court if committed by an attorney appearing before the court.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 204 FILING AND SERVICE OF DOCUMENTS; COMMUNICATION WITH COUNCIL

Env-AC 204.01 Filing of Documents.

- (a) Any document required to be filed with the council shall be filed by mailing or delivering the original and 15 copies of the document to the following address:

Air Resources Council
c/o DES, Air Resources Division
64 N. Main Street
Concord, NH 03302-2033
ATTN: ARC Council Clerk

[Source. #6586, eff 9-23-97](#)

Env-AC 204.02 Date of Filing or Issuance.

- (a) All requests for findings or conclusions, correspondence, motions, petitions, applications and any other written documents governed by these rules shall be deemed to have been filed with the council on the actual date of receipt by the clerk in accordance with Env-AC 202.07.
- (b) All orders and decisions issued by the council shall be sent via certified mail, United States Postal Service, or next day delivery, and shall be deemed to have been issued as of the date appearing on the order or decision.

[Source. #6586, eff 9-23-97](#)

Env-AC 204.03 Subscription and Veracity of Documents.

- (a) All petitions, motions, replies, objections, briefs and other documents filed with the council shall be signed and dated by the proponent of the document or, if the party appears by a representative, by the representative.
- (b) The signature on a document filed with the council shall constitute a certification that:
- (1) The signer has read the document;
 - (2) The signer is authorized to file it;

(3) To the best of the signer's knowledge, information, and belief, there are good grounds to support it; and

(4) The document has not been filed for purposes of delay or harassment.

[Source. #6586, eff 9-23-97](#)

Env-AC 204.04 Service of Documents.

(a) Subject to (c), below, all motions, replies, exhibits, memoranda, or other documents filed in an appeal or other adjudicatory proceeding shall be served by the proponent upon all parties to the proceeding and any complainant or other interested person who has an intervention request pending by:

(1) Depositing a copy of the document in the United States mail, first class postage prepaid, addressed to the last address given to the council by the party being served, on or before the date it is filed with the council;

(2) Delivering a copy of the document in hand on or before the date it is filed with the council; or

(3) Where service cannot be made by (1), or (2), above, such other means as the council shall order to ensure that proper notice is given.

(b) Subject to (c), below, all notices, orders, decisions or other documents issued by the council in the course of an adjudicatory or other proceeding shall be served by the council upon all parties to the proceeding by either:

(1) Depositing a copy of the document, first class postage prepaid, in the United States mail, addressed to the last address given to the council by the party being served; or

(2) Delivering a copy of the document in hand to the party.

(c) When a party has appeared by a representative, service required pursuant to this part shall be upon the representative. However, timely service which is actually received by a party shall be sufficient regardless of whether the party's representative was also served.

(d) Except for exhibits distributed at a prehearing conference or hearing, every document filed with the council, and required to be served upon the parties to an adjudicatory proceeding, shall be accompanied by a certificate of service, signed by the person making services, attesting to the method and date of service, and the persons served.

[Source. #6586, eff 9-23-97](#)

Env-AC 204.05 Communications with the Council.

(a) All communications with the council shall be filed in accordance with Env-AC 204.01 and shall identify the name and address of the communicator and the subject matter of the communication. No person shall submit any documents or exhibits or otherwise communicate any other information pertaining either directly or indirectly to the subject matter of any pending appeal directly to any member of the council.

(b) No information shall be considered as evidence or made part of the record in any proceeding before the council that is not introduced as evidence in accordance with this chapter.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 205 MOTIONS AND OBJECTIONS

Env-AC 205.01 Motions and Objections Thereto.

(a) Once the council has commenced an adjudicatory or declaratory proceeding, further communication with the council by the parties concerning that proceeding shall be in the form of a motion and objection thereto.

(b) All motions shall be in written form unless the nature of the relief requested requires that the motion be made spontaneously in the context of an oral proceeding. Written motions shall be included in the record of the appeal proceedings. Oral motions shall be recorded in full in the minutes or on the tape of the hearing.

(c) All motions shall be:

(1) Signed and dated as provided by Env-A 204.03; and

(2) State clearly and concisely:

a. The purpose of the motion;

b. The relief sought by the motion;

c. The statutes, rules, orders, or other authority authorizing the relief sought by the motion; and

d. The facts claimed to constitute grounds for the relief requested by the motion.

(d) Objections to motions shall be:

(1) Signed and dated as provided by Env-A 204.03; and

(2) State the following clearly and concisely:

a. The basis for the objection by the party filing the objection;

b. The action which the party filing the objection wishes the council to take on the motion;

c. The statutes, rules, orders, or other authority relied upon in defense of the objection; and

d. Any facts which are additional to or different from the facts stated in the motion.

(e) An objection to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in a motion shall constitute the admission of that fact for the purposes of the motion. In the event a party filing an objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact, and this statement shall have the effect of a denial.

(f) Repetitious motions shall not be submitted.

(g) Unless otherwise ordered by the council, objections to motions shall be filed within 10 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 206 APPEALS PROCEDURES

Env-AC 206.01 Applicability. The procedures set forth in this part shall apply to all appeals allowed by law to be taken to the council. Pursuant to RSA 21-0:14,I, this part shall not apply to any decision of the council pertaining to rulemaking or declaratory rulings.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.02 Time for Filing of Appeals.

(a) Subject to (b), below, pursuant to RSA 125-C:15,I, any appeal in respect to an order shall be filed no later than 30 days after the date of issuance of such notice or order.

(b) Pursuant to RSA 125-C:15,I-a, any appeal in respect to an order relating to a Stage II vapor recovery requirement shall be filed no later than 10 days after the date of issuance of such notice or order.

(c) Pursuant to RSA 125-C:12,III, any other appeal of a decision to grant or deny a permit shall be filed no later than 10 days after the final date of the decision.

(d) Any appeal of a decision to grant or deny a variance pursuant to RSA 125-C:16 shall be filed no later than 30 days after the date of the decision.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.03 Notice of Appeal.

(a) Appeals shall be commenced by filing a notice of appeal as specified by this section with the council.

(b) A notice of appeal shall include the following:

(1) A clear and concise statement of the relief sought and the statutory provision under which the relief is sought;

(2) The legal name of each person seeking the relief and the residence address and principal place of business of such person;

(3) A concise and explicit statement of the facts upon which the council is expected to rely in granting relief;

(4) A concise and explicit statement of the law which supports the requested relief; and

(5) A copy of the decision or order which is being appealed.

(c) A notice of appeal may also include such other information as the appellant deems pertinent and relevant, including information such as exhibits, illustrations and sworn written testimony.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.04 Docketing, Service of Notice, and Public Access.

(a) The council shall assign each appeal a docket number. The council clerk shall serve the notice of appeal to the members of the council and upon all parties to the proceeding. If required by statute, service shall be by certified mail. Otherwise, service shall be in accordance with Env-AC 204.04. The docket number so assigned shall be used by all parties to identify all letters and other documents relating to the appeal.

(b) Service of all subsequent orders, decisions and notices issued by the council, including any amendments to the hearing notice, shall be served upon the parties, including any intervenors, in

accordance with Env-AC 204.04, unless otherwise required by statute.

(c) Orders, notices, and decisions of the council, and motions, memoranda, exhibits, and other documents and data submitted to the council in a docketed case shall be kept in a docket file and made available for public inspection at the division's office at Concord during regular business hours, except to the extent that confidentiality has been otherwise provided for by law.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.05 Transmittal of Division Record.

(a) Within 20 working days of the filing of an appeal, the division shall prepare and transmit to the council a certified copy of the record of the action or decision which has been appealed. The record shall be certified by the director or his designee.

(b) The record prepared pursuant to (a), above shall contain to the extent applicable:

- (1) A copy of any permit issued to the owner or operator of the device or source concerning which the appeal has been filed;
- (2) A copy of any application for a permit, permit modification, or permit amendment filed by the owner or operator of the device or source concerning which the appeal has been filed;
- (3) A copy of any application for a variance request and the decision thereon filed by the person appealing concerning which the appeal has been filed;
- (4) A copy of any administrative order concerning which the appeal has been filed and any non-confidential documents prepared by the division relating to the order;
- (5) All non-confidential correspondence between the division and any person which is relevant to the appeal; and
- (6) All correspondence and submissions to the division by the person appealing which are relevant to the appeal.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.06 Scheduling of Hearing.

(a) Any party may request the council to schedule a prehearing conference pursuant to RSA 541-A:31, V(b) and RSA 541-A:38.

(b) Notwithstanding (a), above, the council shall schedule a hearing for appeal under this chapter no later than 60 days after receipt by the council of a notice of appeal that complies with Env-AC 206.03.

(c) Except in respect to an appeal of a permit issued pursuant to Title V of the Clean Air Act, 42 U.S.C. 7001 et. seq., the council shall send written notice of the date, time and place of the hearing to the appellant, the division, and to all other persons known by the council to have a direct interest in the appeal. The notice shall include a statement that the hearing shall be for consideration of the issues raised in the notice of appeal, a statement of the legal authority under which the hearing is to be held, and a reference to the particular statute(s) and/or rule(s) involved in the appeal.

(d) The council shall send written notice of the date, time and place of the hearing in respect to an appeal of a permit issued pursuant to Title V of the Clean Air Act to the appellant and the

division, and shall cause notice of such hearing to be published in a newspaper with statewide circulation no less than 30 days prior to such hearing.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.07 Calendar of Hearings. The council clerk shall maintain a record of all appeals pending before the council.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.08 Extensions of Time.

- (a) Any party to an appeal may petition the council to extend any time limit established by these rules, except those time limits set by statute, if meeting the prescribed time limit would unduly burden the party or if an extension is otherwise necessary to conduct a more effective hearing. A request for an extension shall be submitted in writing to the council at least 3 business days prior to the expiration of the prescribed period and shall state the reason(s) for the extension request. A copy of any such request shall also be delivered in hand or by overnight mail to all parties of record.
- (b) Any other party to an appeal may object to the request by filing a written objection with the council, stating the reasons why the request should not be granted.
- (c) If there is no opposition to the request and the delay would not prejudice any direct interests to the appeal, the council shall grant the request. If an objection to a request is filed, the council shall consider whether the delay would prejudice any direct interests to the appeal and shall rule on the request as on any other motion.
- (d) The council shall notify all parties in writing of its ruling.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.09 Intervention.

- (a) Petitions for intervention may be filed with the presiding officer of the council at any time after commencement of a proceeding and shall state with particularity:
 - (1) The petitioner's interest in the subject matter of the appeal hearing;
 - (2) The petitioner's position with respect to the subject matter of the hearing;
 - (3) Why the interests of the parties and the orderly and prompt conduct of the proceeding would not be impaired; and
 - (4) Any other reasons why the petitioner should be permitted to intervene.
- (b) The council shall grant a petitions for intervention granted if the petitioner has a substantial interest in the proceeding and has complied with RSA 541-A:32.
- (c) Subject to RSA 541-A:32,III, petitions for intervention shall be granted subject to appropriate conditions or limitations. Such conditions or limitations shall be subject to modification by the council at any time during the proceeding.
- (d) Once granted leave to intervene, an intervenor shall take the proceeding as he or she finds it and no portion of the proceeding shall be repeated because of the fact of intervention.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.10 Pre-Hearing Conferences.

(a) At any time following the commencement of an adjudicatory proceeding, the presiding officer, upon motion, or upon his or her own initiative, shall request all interested parties to attend one or more prehearing conference to aid in the disposition of the proceeding and to submit proposed stipulations, proposed exhibits, or proposed witness lists at, or in advance of, such a conference.

(b) Parties and intervenors shall be prepared to discuss the following at a prehearing conference:

- (1) Opportunities for settlement;
- (2) Opportunities for simplification of the issues;
- (3) Possible amendments to the pleadings;
- (4) Possible admissions of fact and stipulations concerning the admissibility of evidence to avoid unnecessary proof;
- (5) Possible limitations on the number of witnesses;
- (6) Possible changes to the standard procedures which would otherwise govern the proceeding;
- (7) The distribution of written testimony, if any, and exhibits to the parties;
- (8) Possible consolidation of the examination of witnesses by the parties; and
- (9) Any other matters which might contribute to the prompt and orderly conduct of the proceeding.

(c) The council shall cause prehearing conferences to be recorded unless all parties consent to discuss possible settlement off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.11 Hearing Record.

(a) The record of the hearing shall include:

- (1) The certified record submitted by the division;
- (2) Notice(s) of the hearing, tape recording of the hearing;
- (3) All exhibits submitted by the parties;
- (4) All written submissions by the parties, including memoranda, motions, and requests for findings and conclusions; and
- (5) Any other item(s) specified by RSA 541-A:31,VI.

(b) Pursuant to RSA 541-A:31,VII, the entirety of all oral proceedings shall be recorded. Upon request of a party, the council shall provide at cost a duplicate tape of the hearing. Any person desiring a transcript of the hearing prepared by a qualified stenographer shall provide the stenographer and shall bear all expenses associated with the preparation of the transcript.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.12 Evidence.

(a) Proceedings shall not be conducted under the rules of evidence, but the evidentiary privileges recognized by the law of New Hampshire shall apply to proceedings under this chapter.

(b) All data which will reasonably assist the council shall be admissible, but data which is irrelevant or immaterial, unduly repetitious or cumulative shall be excluded.

(c) If the council officially notices a fact, it shall so state, and permit any party, upon timely request, the opportunity to show the contrary.

(d) All persons offering testimony before the council shall do so under oath or affirmation.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.13 Burden of Proof

(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(b) Without limiting paragraph (a), above, all moving parties and all petitioners shall have the burden of persuading the council that their motion or petition should be granted.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.14 Methods of Proceeding. The method of proceeding under this part shall be determined as follows:

(a) Where facts material to the subject matter of the proceeding are in dispute, and personal observation of witnesses or the immediate opportunity for cross-examination of witnesses is necessary or desirable, the proceeding shall, to that extent, consist of a trial-type evidentiary hearing with the subsequent submission of memoranda;

(b) Where facts material to the subject matter of the proceeding are in dispute, but personal observation of witnesses or the immediate opportunity for cross-examination of witnesses is not required, some or all of the proceeding may, to that extent, consist of sequential submission of affidavits and memoranda;

(c) Where there are no disputes of facts material to the subject matter of the proceeding, the proceeding shall be limited to the submission of memoranda wherein are argued the conclusions the parties wish the council to draw from said facts;

(d) Oral argument will ordinarily be confined to a brief opening and closing statement. Written argument in the form of legal briefs or memorandum shall be permitted subject to such filing schedules as the council requires.

(e) The foregoing paragraphs shall not limit the council's authority to structure a proceeding in a manner suitable to its subject matter, or to require the submission of additional data at any time, including the ordering of supplemental hearings.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.15 Exhibits.

(a) Where evidence to be presented consists of numerical or graphic data and such evidence would make oral presentation difficult to follow, such evidence shall be presented in exhibit form. Exhibits may be summarized, supplemented and explained.

(b) The party offering an exhibit shall supply the original and 15 copies thereof to the council and shall provide a copy to all other parties of record.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.16 Requests for Findings and Conclusions. Any party may submit requests for

findings of fact and conclusions of law, and supporting memoranda provided such documents shall be filed by the close of the record.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.17 Continuance.

(a) Any party may request that a hearing conducted pursuant to this part be continued for good cause and reconvened or rescheduled. A request for a continuance of a hearing shall be made in writing at least 5 business days prior to the scheduled hearing date. Good cause shall include, but not be limited to, unavailability of an individual party, a representative or critical witness, or a written representation by a party that a resolution of the matter is likely and requires additional time in which to be completed.

(b) If the council determines that good cause exists and that no other party will be prejudiced by the delay, the council shall grant the request. All orders for continuance shall specify the time and place at which such hearing shall be reconvened. The presiding officer shall notify the parties and the public, if applicable, in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.18 Recess and Adjournment. The council shall, from time to time, on its own initiative, recess or adjourn any hearing as necessary for the orderly conduct of the proceeding.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.19 Supplemental Arguments or Hearings.

(a) The provisions of this part shall not limit the council's authority to structure individual proceedings in a manner suitable to their particular subject matter and due process requirements, to require submittal of supplemental argument or to schedule additional hearings or conferences.

(b) An order scheduling a supplemental argument, or otherwise reopening the record, may be issued by the presiding officer at any time prior to the issuance of a final order in a proceeding.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.20 Decisions.

(a) The council shall issue a final decision in writing in an appeal affecting a permit issued pursuant to Title V of the Clean Air Act, as amended, no later than 60 days following the close of the record.

(b) In all other appeals, the council shall issue a final decision in writing. A final decision adverse to a party in an appeal shall include findings of fact and conclusions of law separately stated. Findings of fact shall include a concise and explicit statement of the underlying facts supporting the findings. If a party has submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed promptly to each party and to his recognized representative in accordance with RSA 541-A:35.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.21 Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law to the council.

(b) The presiding officer shall direct any party to submit proposed findings of fact and conclusions of law. If such an order is issued, the council shall include individual rulings upon such proposed findings or conclusions as part of its final decision.

[Source. #6586, eff 9-23-97](#)

Env-AC 206.22 Ex Parte Communications. Once a notice of hearing has been issued commencing an adjudicatory proceeding, no party shall communicate with any participating council member or the presiding officer concerning the merits of the case except upon notice and opportunity for all parties to participate in accordance with the rules of this chapter. Nor shall any party cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A:36.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 207 PRESIDING OFFICER

Env-AC 207.01 Designation

(a) Adjudicatory proceedings commenced by the council shall be conducted by a presiding officer.

(b) The person who chairs the council shall serve as presiding officer or shall designate another qualified person to so serve.

(c) The council may, at any time, and without notice or hearing, replace the presiding officer.

[Source. #6586, eff 9-23-97](#)

Env-AC 207.02 Authority of Presiding Officer.

(a) Except as otherwise delegated to another person, the presiding officer shall possess all authority with respect to the procedural aspects of adjudicatory proceedings which would be possessed by the council itself, including, but not limited to, the power to administer oaths and affirmations, direct the course of the proceeding, and decide scheduling, procedural and discovery issues.

(b) The presiding officer shall receive no testimony or oral argument on the merits of the case unless other necessary council members are present.

(c) Except in proceedings conducted pursuant to Env-AC 209, the presiding officer shall, consistent with the fair and orderly conduct of the proceeding, permit council members who are present during an adjudicatory proceeding to make inquiries of the witnesses.

(d) The presiding officer shall not accept final offers of settlement or impose consent decrees, but shall assist the parties in reaching settlements. When a settlement has been proposed in writing, the presiding officer shall refer it to the council for decision, but shall not stay the proceeding while the council is deliberating on the settlement proposal.

(e) The presiding officer shall not decide motions or enter orders which finally resolve the proceeding or stay the proceeding for more than 60 days. Potentially dispositive motions shall be referred to the council immediately or deferred until the close of the record.

(f) If the presiding officer believes that a default or similar final order should enter against a party, the presiding officer shall issue a written recommendation to the council, with service on the parties, and the department shall take appropriate action regarding the default or similar final order after allowing the parties 10 days to file objections thereto.

[Source. #6586, eff 9-23-97](#)

Env-AC 207.03 Exceptions to Interlocutory Rulings By The Presiding Officer.

- (a) The council shall not hear or decide on any appeals of decisions made by the presiding officer, including interlocutory appeals of decisions regarding scheduling, or procedural, discovery or other nonfinal orders.
- (b) Exceptions to rulings of the presiding officer shall be considered to have been preserved if a contemporaneous oral or written objection is made on the record.
- (c) Objections to procedural rulings by the presiding officer shall be a proper subject for inclusion in a party's proposed conclusions of law or in any petition for reconsideration filed pursuant to Env-AC 208.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 208 RECONSIDERATION AND STAY

Env-AC 208.01 Motion for Reconsideration or Rehearing.

- (a) An adjudicatory order of the council shall not be final until the date it is served upon the parties pursuant to Env-AC 204.
- (b) Within 30 days after service of a final adjudicatory order, any party may file a motion for reconsideration which shall serve as a petition for rehearing under that statute. No distinction shall be made between the terms "reconsideration" and "rehearing."
- (c) A motion for reconsideration shall:
 - (1) Include any memorandum of law the moving party wishes to submit;
 - (2) Identify each error of fact, error of reasoning, or erroneous legal conclusion contained in the final order which the moving party wishes reconsidered; and
 - (3) Concisely state the correct factual finding, correct reasoning, and correct conclusion urged by the moving party.
- (d) The council shall grant or deny the motion, or any part thereof, on its merits, or treat the motion as one for reopening and grant it pending the receipt of such additional data or additional argument as it considers necessary.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 209 HEARING OFFICERS

Env-AC 209.01 Designation of Hearing Officer.

- (a) On its own motion or the motion of any party the council shall designate a hearing officer, not necessarily a member of the council, to conduct the hearing without the participation by the council if necessary to expedite an appeal proceeding. Whenever a motion is made to have the appeal heard by a hearing officer, whether by the council or a party, the parties shall be notified of the motion and of the identity of the proposed hearing officer. If any party objects to the appeal being heard by the proposed hearing officer the matter shall be scheduled to be heard by the council in accordance with these rules.
- (b) Hearings conducted by a hearing officer pursuant to this section shall be conducted in accordance with these rules. The hearing officer shall be the presiding officer.

(c) After the hearing and the expiration of any period of time allowed for further submissions, the hearing officer shall prepare and submit to the council a written report.

(d) The report prepared pursuant to (c), above, shall include the following:

- (1) The subject of the hearing, including identification of the relevant statutes and rules;
- (2) The names and addresses of all parties to the matter;
- (3) The names and address and of all persons who testified at the hearing either orally or in writing and a summary of each witness's testimony;
- (4) Findings of fact;
- (5) Conclusions based on the findings; and
- (6) A recommendation to the council as to the action to be taken on the notice of appeal and any underlying permit or approval.

(e) The hearing officer shall also prepare and submit along with the report a tape of the hearing or equivalent and all other documents and exhibits of record.

(f) At the next regular meeting after receiving such written report and reviewing the record of the proceedings, the council shall vote to adopt or reject the recommendation of the hearing officer and shall issue a decision to all parties. The decision shall state the basis of the council's determination.

(g) If the council accepts the recommendation of the hearing officer, the council shall incorporate the report by reference, in which case a copy of the report shall be attached to the decision.

(h) If the council rejects the recommendation of the hearing officer, the council shall specify the portion(s) of the report which it rejects. If the council rejects the recommendation of the hearing officer and determines that a hearing before the council is necessary to a full and fair adjudication of the appeal, the council shall so notify the parties, and the appeal shall be scheduled and otherwise proceed in accordance with these rules.

[Source. #6586, eff 9-23-97](#)

PART Env-AC 210 WAIVER OF RULES

Env-AC 210.01 Waiver of Rules. The council, upon its own initiative or upon the motion of any interested person, shall waive the application of any rule provision imposed by this chapter not mandated or required by any statute upon reasonable notice to affected persons and upon a finding that good cause exists for the proposed action, and no party will be prejudiced by the waiver. Requests made prior to or subsequent to a hearing shall be made in writing and shall state the basis for the request. Requests made at a hearing may be made orally, stating the basis for the request, and shall be entered into the record.

[Source. #6586, eff 9-23-97](#)